

**Town Of Lamoine
Application for Variance or
Appeal to the Board of Appeals**

Name of Appellant: Harold MacQuinn, Inc.

Mailing Address: P.O. Box 789

City or Town: Ellsworth, Maine 04605

Telephone (Home) _____ (Work): (207)667-4653

Name(s) of Property Owner: Harold MacQuinn, Inc.

The undersigned requests that the Board of Appeals consider one of the following:

 X **1. An Administrative Appeal.** Relief from the decision, or lack of decision, of the Planning Board in regard to an application for a Site Plan Review Permit. The undersigned believes that (check one):

 X an error was made in the denial of the permit

 X the denial of the permit was based on a misinterpretation of the ordinance

_____ there has been a failure to approve or deny the permit within a reasonable period of time

_____ other _____

Please explain in more detail the fact surrounding this appeal (please attach a separate piece of paper). You should be as specific as possible so that the Board of Appeals can give full consideration to your case.

 2. A Variance.

a. Nature of Variance: Describe generally the nature of the variance.

_____.

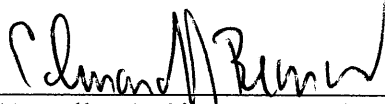
In addition, a sketch plan of the property must accompany this application showing dimensions and shape of the lot, the size and locations of existing buildings, the locations and dimensions of proposed buildings, or alterations, and any natural or topographic peculiarities of the lot in question.

b. Justification of Variance: In order for a variance to be granted, the appellant must demonstrate to the Board of Appeals that the strict application of the terms of the zoning ordinance would cause undue hardship. There are four criteria which must be met before the BOA can find that a hardship exists. Please explain how your situation meets each of these criteria listed below:

1. The land in question cannot yield a reasonable return unless the variance is granted.
2. The need for a variance is due to the unique circumstances of the property and not to the general conditions of the neighborhood.
3. The granting of a variance will not alter the essential character of the locality.
4. The hardship is not the result of action taken by the appellant or a prior owner.

I certify that the information contained in this application and its supplement is true and correct.

Date: June 11, 2014


(Appellant's Signature) Edmond J. Bearor, Esq.
Attorney for Harold MacQuinn, Inc.

Note to Appellant: This form should be returned to the Chairman of the Board of Appeals. You will be notified of the date, time and location of the hearing on your appeal.

**HAROLD MACQUINN, INC.
APPEAL OF PLANNING BOARD DENIAL
OF
SITE PLAN REVIEW APPLICATION**

Facts Surrounding Appeal

On May 13, 2014, the Lamoine Planning Board denied the Application of Harold MacQuinn, Inc. for expansion of the company's Kittridge Pit, located on Lots 31 and 33 of Map 3 of the Town of Lamoine Tax Maps. The application was initially filed by Harold MacQuinn, Inc. on September 17, 2012.

SUBSTANTIVE GROUNDS

The Site Plan Review Ordinance contains at least 20 separate review standards which an applicant must meet. The Planning Board's basis for denying the application for expansion of existing gravel extraction operations was that it did not **preserve and enhance the landscape** and that it was not **consistent with the Town's Comprehensive Plan**. At the appropriate time, the applicant will brief the issue of whether these are lawful standards. However, it is plain that gravel extraction is consistent with the March 5, 1996 Lamoine Comprehensive Plan which under Policies and Policy Implementation Recommendations of the Committee, Orderly Growth and Development, Section 1G, the Comprehensive Planning Committee recommended, and the Town approved, the following Land Use Plan: ..."The remainder of town shall be classified Rural and Agricultural ... this area would prohibit heavy industrial usages, quarrying and mining of all types but sand and gravel removal would still be permitted."

PROCEDURAL GROUNDS

The Applicant's due process rights were violated by certain administrative procedures undertaken by members of the Planning Board.

First, Chairman, John Holt, is Treasurer of the Coldspring Water Company. The Coldspring Water Company is an abutting property owner. Mr. Holt's fiduciary duties to the company are at odds with his position as Chairman of the Planning Board. This is plainly demonstrated by the importance that the Planning Board placed on the project's possible impact on both the quality and quantity of groundwater in the area. (Requiring MacQuinn to spend more than \$50,000 exploring the hydrogeology of the site – when, in the end, the Board based its denial on aesthetics!). As you all probably know, the Coldwater Spring Company's source is located on the parcel that it owns abutting Harold MacQuinn's property. Despite asking that the Chairman recuse himself due to this obvious conflict of interest, he refused to do so.

Second, while the application was pending, Mr. Holt inappropriately approached an abutter to the MacQuinn parcel, Glenn Manring, and asserted that the expansion could negatively impact the value of his property and drinking water. Again, when confronted with this evidence, in the form of a sworn affidavit from Mr. Manring, Mr. Holt refused to step down.

Third, during the pendency of this application, the Coldwater Spring Company for which Mr. Holt acts as Treasurer, made an offer to purchase additional land abutting the MacQuinn parcel. The desire to purchase additional land, in and of itself, does not create a conflict. It does, however, exacerbate the preexisting conflict that MacQuinn had raised at the outset of the application review process. Mr. Holt's fiduciary duties to his corporation are at odds with his obligations to MacQuinn to provide a fair and impartial review of the application.

Fourth, after the public hearings on this application had been closed, it was discovered that Planning Board Member, Gordon Donaldson, had circulated sub rosa emails to Board Members urging them to study the materials he enclosed so that the Board might frame its decision so as to deny the application on aesthetic reasons. This transgression was improper on so many levels that the applicant felt obliged to request that Mr. Donaldson recuse himself from the Board's deliberations. Mr. Donaldson refused to do so.

It should be noted that it is Harold MacQuinn, Inc.'s contention that the Standard of Review in both the Site Plan Review Ordinance and the Gravel Ordinance is a *de novo* hearing on the issues raised on appeal.

It should also be noted that an appeal of certain issues directly to the Superior Court arises under the provisions of the Site Plan Review Ordinance. Accordingly, an appeal pursuant to Rule 80B of the Maine Rules of Civil Procedure challenging certain aspects of the Planning Board's Decision will be filed shortly by Harold MacQuinn, Inc. In that regard, we would ask that the Board of Appeals stay its proceedings until the Superior Court has determined what, if any, jurisdiction it will assume over these matters.

Town Of Lamoine
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Appeal to the Board of Appeals

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City or Town: Ellsworth, Maine 04605

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Name(s) of Property Owner: Harold MacQuinn, Inc.

The undersigned requests that the Board of Appeals consider one of the following:

 X 1. **An Administrative Appeal.** Relief from the decision, or lack of decision, of the Planning Board in regard to an application for a Gravel Extraction Permit. The undersigned believes that (check one):

 X an error was made in the denial of the permit

 X the denial of the permit was based on a misinterpretation of the ordinance

 there has been a failure to approve or deny the permit within a reasonable period of time

 other _____

Please explain in more detail the fact surrounding this appeal (please attach a separate piece of paper). You should be as specific as possible so that the Board of Appeals can give full consideration to your case.

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a. Nature of Variance: Describe generally the nature of the variance.

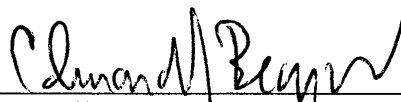
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Date: June 11, 2014


(Appellant's Signature) Edmond J. Bearor, Esq.
Attorney for Harold MacQuinn, Inc.

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**HAROLD MACQUINN, INC.
APPEAL OF PLANNING BOARD DENIAL
OF
GRAVEL EXTRACTION PERMIT APPLICATION**

Facts Surrounding Appeal

In September, 2012, Harold MacQuinn, Inc. filed an application with the Lamoine Planning Board to obtain a Gravel Extraction Permit pursuant to the Lamoine Gravel Ordinance.

In May, 2014, the Planning Board denied MacQuinn's application finding that the company had failed to meet three of 16 review criteria. The review criteria upon which the Planning Board based its denial for the permit application were as follows:

1. The Board concluded that the expansion of the existing gravel extraction operation will unreasonably result in unsafe and unhealthful conditions;
2. The expansion of the existing gravel operation will not conserve natural beauty in keeping with the restoration provisions of the ordinance; and
3. The expansion of the existing gravel operation will adversely affect surrounding properties.

The issues raised in the accompanying appeal of Harold MacQuinn's Site Plan Review Application are incorporated herein.

It should be noted that it is Harold MacQuinn, Inc.'s contention that the Standard of Review in both the Site Plan Review Ordinance and the Gravel Ordinance is a *de novo* hearing on the issues raised on appeal.

It should also be noted that an appeal of certain issues directly to the Superior Court arises under the provisions of the Site Plan Review Ordinance. Accordingly, an appeal pursuant to Rule 80B of the Maine Rules of Civil Procedure challenging certain aspects of the Planning Board's Decision will be filed shortly by Harold MacQuinn, Inc. In that regard, we would ask that the Board of Appeals stay its proceedings until the Superior Court has determined what, if any, jurisdiction it will assume over these matters.